

ORDERED.

Dated: December 28, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:

Chapter 7

James Moffitt and Jennifer Moffitt,

Case No. 8:19-bk-03392-CPM

Debtors.

Alfred Trujillo,

Plaintiff

v.

Adv. No. 8:19-ap-00337-CPM

James Moffitt and Jennifer Moffitt,

Defendants.

ORDER ON COURT'S OWN MOTION FOR JUDGMENT ON THE PLEADINGS

THIS PROCEEDING came on for hearing on January 13, 2020, and March 24, 2020, for consideration of the Plaintiff's complaint to determine dischargeability of a debt under 11 U.S.C. § 523(a)(6) (the "Complaint") and the Defendants' answer thereto. In their answer (Doc. No. 8), the Defendants assert, among other things, that the Complaint was not timely filed. After taking

the matter under advisement and reviewing legal memoranda filed by parties, the Court announced its ruling in favor of the Defendants at a hearing held on June 25, 2020. In short, the Court concluded that although this proceeding was opened within the applicable time period, the Plaintiff initially filed only a Statement of Corporate Ownership (the “Corporate Statement”) and not any pleading. The Complaint itself was not filed until after the time period had expired. In the Plaintiff’s Memorandum of Law as to Jurisdiction, Statute of Limitations Affirmative Defense, Equitable Tolling, and the Timeliness of Filing the Adversary Complaint (the “Plaintiff’s Legal Memorandum”) (Doc. No. 13, supplemented at Doc. No. 15), the Plaintiff’s counsel explains that the late filing resulted from his having picked the wrong document to upload when opening this proceeding; he meant to upload the Complaint but inadvertently uploaded the Corporate Statement instead.

No dispute exists with respect to the deadline within which the Plaintiff had to file a complaint for a determination of non-dischargeability of a debt under § 523(a)(6). The parties agree that the deadline expired on July 22, 2019. The issue is whether the Court may treat the Complaint, which the Plaintiff filed one day late on July 23, 2019, as having been timely filed based on the Plaintiff’s filing of the Corporate Statement on July 20, 2019. Because I find that the Corporate Statement fails to satisfy the pleading requirements of a § 523(a)(6) complaint, the Complaint does not relate back to the filing of the Corporate Statement. Consequently, the Complaint was untimely.

Both parties properly cite the Eleventh Circuit’s decision in *Beem v. Furgenson* for guidance.¹ In that case, a creditor filed a *motion* to determine non-dischargeability of a debt within the time permitted to file a complaint for such relief. However, the creditor did not file an actual complaint until after the deadline for doing so had expired. Thus, the issue before the

court was whether the creditor's "untimely complaint in the adversary proceeding may relate back to the filing of the timely, but procedurally improper, motion in the bankruptcy case."²

Rule 7015, Federal Rules of Bankruptcy Procedure, adopts Rule 15, Federal Rules of Civil Procedure,³ including the subsection that governs "Relation Back of Amendments." Under this subsection, "[a]n amendment to a pleading relates back to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading."⁴ Therefore, the first task of the *Beem* court was to decide if the creditor's improperly filed motion qualified as an "original pleading" to which relation back applies.⁵ In making this determination, the court looked to Rule 7008, which adopts Rule 8, Fed. R. Civ. P., under which a pleading must contain the following: (1) a short and plain statement of the grounds for the court's jurisdiction; (2) a short and plain statement of the claim showing the pleader is entitled to relief; and (3) a demand for the relief sought.⁶ Analyzing the creditor's motion in light of these requirements, the *Beem* court concluded that because the motion prominently requested an order holding the creditor's debt non-dischargeable, cited the applicable legal standards under § 523(a)(6), and included seven pages of facts detailing the basis for the creditor's position that the debtor's conduct justified the requested relief, the motion could be treated as the functional equivalent of a complaint.⁷ Therefore, the court agreed with the bankruptcy court and district court below that the motion, though not an actual pleading, "[was] sufficient to place the debtor on notice of the

¹ *Beem v. Ferguson*, 713 Fed. App'x 974 (11th Cir. 2018).

² *Id.* at 976.

³ Hereinafter, all references to the rules are to the Federal Rules of Bankruptcy Procedure unless cited as a Federal Rule of Civil Procedure thusly: Rule __, Fed. R. Civ. P.

⁴ See Rule 15(c)(1)(B), Fed. R. Civ. P.

⁵ *Beem* at 978.

⁶ See Rule 8(a), Fed. R. Civ. P.

⁷ *Beem* at 980-81.

claim against him and substantially complie[d] with the notice pleading requirements of Rule 7008.”⁸

Next, the *Beem* court considered whether the allegations in the creditor’s complaint arose out of the same conduct, transaction, or occurrence set out in its motion. Finding that the complaint “contains nearly identical factual allegations regarding non-dischargeability as those in his timely motion,” the court again agreed with both lower courts and concluded that the complaint was timely under the relation back doctrine adopted by Rule 7015.⁹

In the present proceeding, the same cannot be said with respect to the Corporate Statement and subsequent Complaint. The Corporate Statement reads, in its entirety: “Pursuant to Federal Rule of Bankruptcy Procedure 7007.1, and in order to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for Plaintiff/Creditor, Alfred Trujillo, hereby certifies that no party to this adversary proceeding is a corporation.” Thus, the Corporate Statement fails to include short and plain statements of the grounds for the Court’s jurisdiction, the relief sought, and the basis for entitlement to such relief. Consequently, it cannot qualify as a “pleading” for purposes of applying the relation back doctrine.

The Court notes that the original docket entry accompanying the Statement described the filing as a complaint seeking relief under 11 U.S.C. § 523(a)(6) for a determination of non-dischargeability of a debt for willful and malicious injury.¹⁰ This entry, however, was later corrected to describe the filing as a Statement of Corporate Ownership, which is what it was. But even the original docket entry language was insufficient to qualify as a “pleading” for purposes

⁸ *Id.* at 981 (quoting *Dominguez v. Miller (In re Dominquez)*, 51 F.3d 1502, 1509 (9th Cir. 1995)).

⁹ *Id.* at 982-83.

¹⁰ Specifically, the original docket entry text read: “Complaint by Alfred Trujillo against James Moffitt, Jennifer Moffitt. (Verify Fee) Nature of Suit: [68 (Dischargeability - 523(a)(6), willful and malicious injury)]. (Meacham, W).” *See* Composite Exhibit A to Plaintiff’s Legal Memorandum. This docket entry was subsequently corrected by Clerk staff to describe the filing of the Corporate Statement.

of Rule 7008 because it described only the nature of the relief requested and included no factual contentions from which the Court might find that the filing involved the same conduct, transaction, or occurrence set forth in the Complaint.

As an alternative to application of the relation back doctrine, the Plaintiff suggests that the Court may extend the deadline set forth in Rule 4007(c) for filing a complaint seeking an exception to dischargeability even after the deadline has passed because the deadline is not jurisdictional and is, therefore, subject to equitable considerations.¹¹ However, while certain deadlines may be extended under Rule 9006(b)(1) after their expiration upon a showing of “excusable neglect,” the deadline in Rule 4007(c) is not among them. Rule 9006(b)(3) expressly provides that the court may enlarge the time for taking action under certain rules, including Rule 4007(c), “only to the extent and under the conditions states in those rules.” And Rule 4007(c) makes no provision for extending the deadline for filing a non-dischargeability complaint except upon the filing of a motion *before* the deadline expires—and then only if “cause” is shown. Thus, the Plaintiff’s counsel’s “*mea culpa*,” even if he could combine it with a showing of “excusable neglect” cannot save the Complaint.

Accordingly, it is

ORDERED that the Court finds that the Complaint was not timely filed and, therefore, the Court on its own motion, under Rule 7016,¹² will enter a separate judgment on the pleadings in favor of the Defendants.¹³

¹¹ See Plaintiff’s Legal Memorandum and cases cited therein.

¹² See Rule 7016(b) (at a pretrial conference, “[t]he bankruptcy court shall decide, on its own motion or on a party’s timely motion, whether: (1) to hear and determine the proceeding; (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (3) *to take some other action*.”) (emphasis added). See also Rule 1001 (“These [bankruptcy] rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.”).

¹³ See Rule 12(c), Fed. R. Civ. P. (“Motion for Judgment on the Pleadings”) incorporated herein by Rule 7012.

Service by CM/ECF only.